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THE SPANISH SOURCE OF THE MEXICAN CONSTITUTION OF 1824.

JAMES Q. DEALEY.

When Mexico so nobly won its independence from Spain, its leading citizens were not practically trained statesmen, but either enthusiastic patriots or selfish adherents to a popular cause. The numerous revolutions that followed the establishment of the republic after the overthrow of Iturbide's short lived empire, were due therefore partly to the ambition of unscrupulous politicians, but mainly to the visionary character of the natural leaders of the people, and to the lack of political experience in the mass of the population.

It is not at all strange that the ardent Mexicans, in the full glow of enthusiastic feeling at having won for themselves a name among the nations of the earth, should have turned toward their northern neighbor for the pattern of the new political institutions about to be formed. No antagonisms had yet arisen between the two peoples; the well known sympathy of the Monroe administration for the Spanish-American Republics had won the warm gratitude of these embryo nations; and the Monroe doctrine of December, 1823, seemed permanently to cement this friendly feeling. Consequently when in 1824 the Mexicans proclaimed in their famous constitution the form of their government to be a Federal republic, the impression

at once prevailed in the United States that they had reproduced the main features of the American system. This opinion may be seen from quotations from several historical writers of that time and the present.

"The Federal Constitution of the Mexican Republic, modeled after the Constitution of the North American Union." Kennedy's Texas, vol. I, p. 306.

"The Mexican federal constitution of 1824 * * * was formed upon that of the United States." Yoakum's Texas, vol. I, p. 230.

"In 1824 the Mexicans * * * adopted a Federal Republican constitution, in palpable imitation of the Constitution of the United States." Bruce's Houston, page 70.

"* * * Constitution of 1824, which in many particulars was a copy of the Constitution of the United States." Bernard Moses' Introduction to the Constitution of the United States of Mexico.

"Several of its articles are transcripts of corresponding clauses in the Constitution of the Northern United States. Here and there appears the old Spanish leaven, particularly in the Fourth Article (sic. should be Third). * * * Comments almost without number were made even in those early days by both Mexicans and foreigners, endeavoring to show that the troubles Mexico soon found herself involved in, were the result of the liberal institutions she had adopted by servilely copying, as the commentators said, her more fortunate neighbor of the North." Bancroft's History of Mexico, vol. V, page 19.

It is the aim of this paper to show, that while the constitution of 1824 was in part formed on the model of that of the United States, much of its form, and practically its entire spirit came from the beloved Spanish Constitution of 1812. This Constitution, overthrown by Ferdinand in 1814, but restored by the army and people in 1820, had secured political liberty and constitutional government for the Spaniards, colonial as well as native, and had granted to the colonies representation in the national cortes. So far were the Mexicans from "servilely copying" the American Constitution, that even those ideas plainly adopted were so altered in spirit and detail that there is clearly implied rather an attempt to adapt them to Spanish institutions than simply to imitate the American constitution. In general it may be said that the Spanish constitution was followed unless the federal republic idea compelled change.

The verbal resemblance of the Mexican and Spanish constitutions may readily be seen in the introductory clauses:

SPANISH.

"In the name of Almighty God, Father, Son and Holy Ghost, the Author and Supreme Legislator of the Universe."

"The general and extraordinary Cortes of the Spanish nation * * * do decree the following constitution."

"The nation is free and independent, and is not the patrimony of any family or person whatever."

"The Roman Catholic and apostolic religion, the only true one is, and always shall be, that of the Spanish nation; the government protects it by wise and just laws, and prohibits the exercise of any other whatever."

MEXICAN.

"In the name of God Almighty, Author and Supreme Legislator of Society."

"The general constituent Congress of the Mexican nation * * * do decree the following constitution."

"The nation is forever free and independent of the Spanish government and of every other power."

"The religion of the Mexican nation is and will be perpetually the Roman Catholic apostolic. The nation will protect it by wise and just laws, and prohibits the exercise of any other whatever."

This close parallelism can be traced through clause after clause, showing not merely the adoption of the idea, but even the copying of the very words. This same point may be illustrated by the plan adopted of dividing the various topics; both constitutions use the terms, titles, sections, and articles; these last, furthermore, are numbered consecutively. The order of titles also may be noted. The Spanish constitution has ten, of which the Mexican omits titles 1, 7, 8, and 9 and divides title 3 into two. With these changes the topics and order are practically the same, viz.: territory and religion, form of government and separation of powers, into legislative, executive, and judicial, local government, and lastly the method of amending the constitution.

Without devoting further space to parallelisms of words, attention will now be called to the ideas themselves. Undoubtedly the statement of the fourth clause represents the victory of the Mexican federal party over the Centralists. It reads "The Mexican Nation adopts for its government the republican, representative, popular, federal form." In this we find the high water mark of American influence; a republic, rather than a monarchy; a federation, rather than a centralized government. The important difference between the American and Mexican systems lies in the interpretation of federalism. In our system the national state was created by the local states and, in 1824, the former was still comparatively weak as

against the latter. These by constitution have inherent, not delegated powers, full local control subject to certain constitutional restrictions, and have their integrity and powers fully guaranteed by such provisions as clause 1, section 3, article 4, the last two lines of article 5, and amendments X and XI. In the Mexican system, however, the local states were created by the national state (though in most cases with historic boundaries) which delegated to them their powers of local self-government and restricted them far more closely than in our system. For instance state governors might be impeached, the local states in their constitutions had to guarantee many legal rights (articles 145-156), to separate the governmental powers into the three divisions and keep them separate, and to have but one legislative house; they had to report annually to the national congress their financial and industrial condition, and to submit annually to congress and the executive their constitution and laws (title V). Over these Congress had virtually the veto power, inasmuch as it, and not the supreme court, had the power of deciding the constitutionality of laws.

The adoption of the federal idea necessitated a departure from the unicameral legislature of Spain in the addition of a senate to the representative house. The Mexican senate, as in the United States, comprised two members from each state. These were elected for four years by the state legislatures on the same day (Sept. 1), one-half retiring every two years, but vacancies were filled by the legislatures only. The senate confirmed nominations to positions in the treasury, diplomatic service, and the army and navy, but not other officials. In other respects it was simply one of two legislative houses. Both houses ratified treaties, and both had the power of impeachment. Either house, furthermore, might impeach members of the other house.

In leaving the federal idea with its senate and local and national states we practically leave the contribution of the United States to the Mexican constitution. Of course there are slight resemblances here and there (for instance in the organization of the executive), but these are comparatively unimportant.

Attention will now be directed to the ideas contributed by the Spanish constitution. Both the Spanish and Mexican constitutions devote an article to a statement of national territory and both formally divide the functions of government into the threefold

division. The Spanish document gives in full the method of holding elections, this was not made part of the Mexican constitution, but became a separate law, following the details closely in prescribing the system of substitutes and the meeting of primary assemblies, which elected electors, who again elected other electors, who in their turn chose the provincial or the state deputies to the Congress. Elections in both cases were held on Sunday and religious processions, services, exhortations and *te deums* were prescribed. In Mexico as in Spain in electing deputies substitutes also were chosen, at the ratio of one substitute for every three deputies. In Spain the king, in Mexico the President, opened Congress with a speech, to which in both the presiding officer was to reply "in general terms." In comparing the powers of the two legislatures we note equal emphasis on national higher education, freedom of the press, and individual responsibility of the members of the cabinet to the congress. In general the powers of the Mexican congress may be traced in those of the Spanish cortes and of the king, besides several evidently taken from the United States, and others local in origin. Legislation in Mexico might be initiated by Congress, the President, or by the state legislature, in Spain by the cortes and by the king. In the Mexican as in the Spanish constitution an absolute majority was required to pass bills, which in Mexico might be vetoed as in the American system, the royal veto of course being inappropriate in a Republic. There were in both property qualifications for members of the legislative bodies, but in Mexico this applied only to naturalized foreigners who in Spain were debarred from membership in the Cortes. In both a candidate might stand in the district of his residence as well as that of his birth; the former district must be preferred in case of plural elections. In both practically the same classes of persons were debarred from becoming candidates.

During the recesses of the legislative bodies permanent committees, elected from the membership of the Cortes and of the Congress, sat with delegated powers to watch over the observance of the constitution and the laws (and incidentally to watch the executive). This important body of course is lacking from the American system, though a similar body had existed under the Articles of Confederation.

In vesting the executive powers in a President rather than in a monarch a mingling of American and Spanish ideas may be expected.

From the United States e. g. came the title, the qualifications, and the four year term. The President and the Vice-President, however, were elected by the state legislature, not by electors. An absolute majority of votes elected, ties being settled in the House by methods fully covering all possible cases. If the House failed to elect by the day set for the inauguration, or if there happened to be an unexpected vacancy, a President pro tem. was elected or, in certain possibilities, the Chief Justice of the supreme court might assume the office. The President, following the Spanish deputy method, could not accept a second term till after an interval of four years. So far, the resemblance in form to the provisions of the American constitution is marked. The important departure from this model comes in the enumeration of executive powers. The powers of the American executive are vague and ill-defined, purposely so, presumably; the powers of the Mexican executive, however, like those of the Spanish king, were carefully defined and specifically restricted, though in the aggregate they were very large. Among imitations of Spanish clauses may be mentioned, the power to appoint and remove the secretaries of the Department, to dispose of the national forces on land and sea, to declare war, to regulate the relations of the nation with the Papal See, and the power to initiate bills. In addition may be mentioned the prohibition placed on his departure from the national territory or to infringe on property rights, or to interfere with the national elections. The Vice-President, who also was forbidden to leave the country, presided over, not the senate, but the Council of Government already mentioned. This important body, besides acting as a substitute for Congress during recess, also acted as a council of state, to advise the executive and to recommend legislation. It thus combined the functions of the "Permanent Committee of the Cortes" and of the "Council of State," as defined in the Spanish constitution. The Mexican constitution devoted six articles, the Spanish nine, to the secretaries of state. The main difference is that the latter constitution gave the names of the departments and the number of secretaries. Both constitutions required the same qualifications for holding office, annual reports, countersignatures to the laws affecting the respective departments, and responsibility to the legislative body.

In the organization of the Mexican judicial system, as outlined in the constitution, a resemblance to that of the United States is easily

noted, but the spirit except where the federal idea compelled change, is distinctly that found in the constitution of 1812. The system required an Attorney-General, a Supreme Court, and Circuit and District Courts. Judges of the Supreme Court held during good behavior, but were elected by the state legislature by an absolute majority of votes. The House, as in the case of the President, was to elect from the candidates named as many as failed to receive the required majority. Inferior judges were named by the Supreme Court and appointed by the President. The chief powers of the Supreme Court were, to settle interstate disputes, to act as an administrative court, as a court of last resort, as a court to try impeachments, and as an advisory body in matters appertaining to the Papal See. It decided admiralty cases, cases in which diplomatic agents were concerned, and cases involving the national laws. All of these powers, however, might be regulated by Congress.

The Spanish system also had three classes of courts. The judges were named by the council of state and appointed by the king under life or fixed term tenures. The powers of the Spanish "supreme tribunal of justice" were with slight alterations the same as those enumerated in the Mexican constitution, save that it had of course no interstate jurisdiction. This close resemblance in judicial matters might be still further traced; the legal rights of citizens specified in both are close parallels, both in words and in thought. As illustrations might be noticed the principles of arbitration and conciliation, guarantees of speedy trial without torture or forced confessions, the privilege of bail, and the prohibitions of search without warrant and of the confiscation of the property of criminals. In both constitutions also the army and the church remained under their own jurisdictions, not under the ordinary laws.

Finally the Mexican method of amending the constitution was in direct imitation of the Spanish method, with of course slight changes of detail. There was to be a long period (Mexico six years, Spain eight years) during which no amendments could be offered at all. The Congress at the end of that period might suggest amendments to the following Congress; this in turn might consider and recommend by a two-thirds vote to the following Congress, which in its turn might pass them as ordinary laws. The Mexican constitution, unlike either the Spanish or the American, forbade the amending of the fundamental ideas of the constitution.

Enough has now, perhaps, been given to show that the real basis of the Mexican constitution of 1824 was the Spanish constitution of 1812, and that the departures from the latter were due largely to the adoption of the form of a federal republic, which compelled, to some extent, the imitation of the American model. But, even in so imitating, the framers of the Mexican constitution endeavored to mould the unfamiliar institutions of the North to the more familiar institutions of Spain.

This inquiry into the origin of the Mexican constitution is not merely an historical one, but has also a present interest; for the constitution of 1824 forms the basis of the present Mexican constitution, and the two constitutions, that of Spain in 1812 and that of Mexico in 1824 can be shown to be the patterns after which the numerous constitutions of South and Central America have largely been modeled. As might also be expected these same two constitutions powerfully influenced the ideas of the local constitutions of the Mexican states. To illustrate this statement attention might briefly be called to that one that has a special interest for the United States, the first constitution of Coahuila and Texas, adopted 1827. The basis of this is the Spanish constitution, with such changes as were necessitated by the requirements of the federal constitution and by local circumstances. For instance the Spanish titles 7, 8, 9, omitted from the Mexican constitution, reappear in the Coahuilan-Texan constitution as titles 4, 5, 6. Whole clauses are transferred word for word, and one might almost say that this local constitution more closely resembled the Spanish than did the Mexican constitution.

In this earliest of Texan constitutions many have referred to the generous provisions with regard to education, and to the clause that permitted a trial of the English jury system. Both of these liberal provisions were almost verbally reproduced from the Spanish constitution. The state election law also (dated July, 1826), like that of Mexico proper, was taken almost bodily from the same source.

In view of the foregoing it would be natural to inquire into the origin of these liberal ideas contained in the Spanish constitution. Part, no doubt, can readily be traced to institutions at that time existing in Spain. Again the Spanish, during the formation of the constitution, were in close alliance with England; and, in conjunction with Wellington, were patriotically resisting the usurpations of Napoleon. This alliance would tend to call the current English con-

stitutional principles to the attention of the framers of the Spanish constitution. But there is still a third source to which reference must be made. The greatest political influence of that generation had come from the French revolution, in which the French at first, as the Spaniards were then trying to do, had overthrown despotism and had established a constitutional monarchy on the basis of the sovereignty of the people. One need simply quote the third article of the Spanish Constitution to show this French influence. "Sovereignty resides essentially in the nation; in consequence whereof it alone possesses the right of making its fundamental laws." In the French constitution of 1791 and 1795 (not the radical constitution of 1793) we can find the general order of titles in the Spanish constitution, the plan of numbering clauses, the method of amending, and such ideas as the threefold division of powers, a unicameral legislature, indirect elections, the system of substitutes, the prohibition of continuous terms of office, the method of veto, the individual responsibility of each member of the cabinet to the legislative body, freedom of the press, free public and liberal education, and equality in civil and political rights. These ideas, to be sure, are in part of English origin; but the student of modern political institutions will recognize two important sources of political theory, the one arising from the English constitution and finding its best exponent perhaps in American institutions; the other springing from the French revolution, recasting old institutions, formulating new theories, and sending forth broad lines of influence throughout all the Romance nations and their colonies.